

In an operative report dated October 2, 2000, Dr. Richard Nolan, a Board-certified orthopedic surgeon, performed a right carpal tunnel release and partial excision of the transverse carpal ligament, neurolysis of the median nerve and exploration of the thumb, extensor/abductor tendon with release. He diagnosed right carpal tunnel syndrome, bilateral and de Quervain's stenosing tenosynovitis of the right thumb. On November 13, 2000 Dr. Nolan performed a left carpal tunnel release and partial excision of the transverse carpal ligament and neurolysis of the median nerve. He diagnosed left carpal tunnel syndrome and hypertrophy of the transverse carpal ligament.

On August 21, 2003 appellant filed a claim for a schedule award. She submitted an August 12, 2003 report from Dr. Nolan who noted that appellant's symptoms of constant aching and numbness in the wrists.

In a report dated October 10, 2003, Dr. John R. Chu, a Board-certified orthopedic surgeon and an Office referral physician, diagnosed post bilateral carpal tunnel release with residual numbness and subjective numbness of her upper extremities. He advised that appellant reached maximum medical improvement on that date. Dr. Chu opined that there was no permanent function loss of either upper extremity with good sensation to light touch as well as two-point discrimination.

In a report dated November 3, 2003, an Office medical adviser found that appellant had 10 percent impairment of both the right arm and left arm.

In a decision dated November 13, 2003, the Office granted appellant a schedule award for 10 percent impairment of each upper extremity. The period of the award was from October 10, 2003 to December 19, 2004.

On November 8, 2004 appellant requested reconsideration and submitted reports from Dr. Nolan dated October 2, 2003 to January 6, 2005. Dr. Nolan disagreed with the findings of Dr. Chu and opined that appellant sustained a 39 percent sensory impairment of the median nerve bilaterally and a 7 percent sensory impairment below the mid-forearm bilaterally.

In a decision dated February 4, 2005, the Office denied modification of the November 13, 2003 schedule award.

On January 3, 2006 appellant requested reconsideration. In reports dated March 17, 2005 to February 2, 2006, Dr. Nolan noted appellant's persistent complaints of bilateral carpal tunnel symptoms. An electromyogram (EMG) dated August 12, 2005 revealed no evidence of diffuse peripheral neuropathy, mild median neuropathy at both wrists and no evidence of cervical radiculopathy.

In a report dated January 31, 2006, the Office medical adviser opined that appellant had no greater than the 10 percent impairment of the upper extremities previously awarded.

In a February 23, 2006 decision, the Office denied modification of the February 4, 2005 decision.

On February 14, 2007 appellant requested reconsideration and submitted additional evidence. A magnetic resonance imaging (MRI) scan arthrogram of the right shoulder dated March 1, 2006 revealed a tear of the supraspinatus tendon. In reports dated May 4 to December 19, 2006, Dr. Nolan noted appellant's continued complaints of pain and paresthesias in the upper extremities. He noted that wrist splints and medications were ineffective in relieving appellant's symptoms and referred her for an evaluation for possible peripheral neuropathy. In a report dated January 11, 2007, Dr. Nolan reported that appellant was seen by Dr. Eric Denys, a Board-certified neurologist, who opined that appellant's condition involved the skin nerves and ruled out persistent median nerve entrapment. Additional reports from Dr. Nolan addressed appellant's complaints of persistent, aching, throbbing pain in the bilateral wrists, hands and forearms with associated numbness. On August 15, 2006 he noted that appellant could continue to work subject to restrictions. A January 6, 2007 EMG revealed normal motor and sensory nerve conduction with a normal median radial sensory comparison. Also submitted were MRI scan results for the cervical spine dated January 24 and February 12, 2007, which revealed disc degeneration, disc protrusion at C5-6 suspicious for cord impingement. A January 22, 2007 report from Dr. Barbara A. McQuinn, a Board-certified neurologist, noted a history of injury and diagnosed subjective numbness in both hands and distal forearms status post bilateral carpal tunnel syndrome. She opined that appellant did not have a neuropathy and recommended additional testing to rule out a central cord process or multiple sclerosis.

By decision dated April 6, 2007, the Office denied appellant's reconsideration request on the grounds that the evidence was insufficient to warrant further merit review.

LEGAL PRECEDENT

Under section 8128(a) of the Act,¹ the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,² which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

- “(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or
- (ii) Advances a relevant legal argument not previously considered by the (Office); or
- (iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office.]”

¹ 5 U.S.C. § 8128(a).

² 20 C.F.R. § 10.606(b).

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.³

ANALYSIS

Appellant's February 14, 2007 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant submitted medical reports from Dr. Nolan who addressed her continued complaints of pain and paresthesias in the upper extremities. He advised that wrist splints and medication were ineffective in relieving appellant's symptoms. However, these reports are not relevant to the underlying issue in this case because they do not address appellant's permanent impairment due to her accepted conditions. The reports are similar to Dr. Nolan's prior reports already contained in the record and were previously considered by the Office.⁴ Therefore, the Office properly found that this evidence did warrant reopening the claim for a merit review.

Appellant submitted a January 22, 2007 report from Dr. McQuinn who saw appellant for persistent pain and numbness in her hands and diagnosed subjective numbness in bilateral hands and distal forearms status post bilateral carpal tunnel syndrome. She opined that appellant did not have a neuropathy and recommended additional testing. This report is not relevant because it did not address whether appellant had greater permanent impairment due to her employment injury. Appellant also submitted reports of diagnostic testing. These reports are also not relevant because they do not address the issue of appellant's permanent impairment due to her accepted conditions. Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

Appellant neither showed that the Office erroneously applied or interpreted a point of law; advanced a point of law or fact not previously considered by the Office; nor did she submit relevant and pertinent evidence not previously considered by the Office."⁵

³ *Id.* at § 10.608(b).

⁴ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case; see *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁵ 20 C.F.R. § 10.606(b).

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), and properly denied her February 14, 2007 request for reconsideration.⁶

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 6, 2007 is affirmed.

Issued: December 3, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁶ Following the Office's April 6, 2007 decision, appellant submitted additional evidence to the Office. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).